YOUNG, J. (*concurring*).

If the average citizen is wondering why it is so hard, in this time of Michigan's economic duress, to reduce the cost of government, the angry tone of the dissenting statements should serve as an object lesson in how difficult it is – even in these tough budget times – to save taxpayers the first nickel of their own money by shrinking an oversized branch of government.

The Court has today authorized the State Court Administrative Office (SCAO) to transmit its report on judicial resources to the Legislature. I support the immediate transmission of the SCAO report to the Legislature and Governor. Unlike some of my colleagues on the Supreme Court, I see no downside to providing the hard SCAO judicial resource data now, when it might inform the legislative budget discussion with actual information on how the size of the judiciary could be reduced in cost without impairing its ability to serve its mission.[1]

Given the on-going State budget crisis, there seems to be little question that either our taxes must be raised or the size of our State government must shrink to meet its available revenues. I firmly believe that the Judicial Branch must do its part in this budget crisis to remove unnecessary operation expenses in order more efficiently to deploy its available resources to the essential services it provides the citizens of Michigan. The SCAO report provides an intelligent way to accomplish this goal in the third branch of our government.

The SCAO report provides hard caseload data (and very conservative recommendations) concerning which judicial positions might be eliminated in courts where the State has too many judges for the available workload. It is certainly my hope that the Legislature will use this data in formulating the judiciary budget so that any cuts which must be made therein will first remove the unnecessary expenses associated with "over judged" courts. It is also my hope that this Court will consider making its own recommendations based on the SCAO data and that this Court will be more aggressive in recommending elimination of judgeships in courts that have more judges than their caseloads warrant.

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[1] Our dissenting colleagues broadly attack the methodology of the SCAO recommendations without offering any specific criticism of that methodology. Perhaps that is because there is no sound basis for this attack. Indeed, the methodology behind this report is the same as that used in previous reports, to which our colleagues did not object, and is backed by hundreds of hours of detailed work by expert SCAO staff, judges, and court staff. The judges of the courts affected by the recommendations, including the judges of the Court of Appeals, were given an opportunity to respond to the draft report and did so prior to the Supreme Court's authorization of its release. Their responses, along with additional information from SCAO in response to them, will be further considered when the Court takes up this matter again in September.

Significantly, this SCAO report includes an analysis of the Court of Appeals which has experienced a sharp decline in case filings over the past 15 years (from more than 13,000 appeals in 1992 to fewer than 8,000 in 2006). The Court of Appeals has enormous fixed costs and essentially no "programs" to cut. The overwhelming majority of its budget is attributable to the salaries and benefits of its employees. The fully loaded salary and benefit expense of maintaining a Court of Appeals Judicial office is approximately $360,000 annually. (The judicial compensation component of this expense cannot be constitutionally reduced during the term a judge currently serves.) As a result of the on-going budget crisis, the Court of Appeals has employed a series of short term and stop gap cost reduction measures, such as mandatory employee furloughs. The research department, upon which that Court depends for the initial processing of appeals, has declined by one-third in the last decade. This is the lowest judge-to-research attorney ratio since the Court of Appeals was increased to its current complement of 28 judges.

In short, absent a *very* substantial increase in funding, the Court of Appeals has essentially run out of options for absorbing additional budget cuts unless the number of judges of the Court of Appeals is reduced and some of those savings are redeployed to increase support staffing. Otherwise, the Court will no longer be able to dispose of cases in a timely fashion and the gains it has recently made on that front will be swiftly reversed. It is worth noting that the idea of reducing the number of Court of Appeals judges is not new nor did it originate with SCAO or the Supreme Court. The Court of Appeals itself considered this option as a part of its long range planning in 2005. (See item 7 of the attached 2005 Court of Appeals Long Range Planning document.)

However, given these two most obvious options for addressing the budget crisis, the leadership of the Court of Appeals has opted to increase its funding by proposing a significant increase in court fees. At the behest of the Court of Appeals, the House Appropriations Committee has favorably reported out a bill (H.B. 4501) introduced to raise the Court of Appeals filing fee to $415 – a fee which, if enacted, would not only exceed that of the Michigan Supreme Court but would *make the fee of the Court of Appeals the third highest in the nation.* (Only California and Minnesota would charge a higher appellate fee.) The proposed increase would follow a 50% increase (from $250 to the current $375) in the Court's filing fees enacted just four years ago. Raising the Court of Appeals fee to this level would certainly have a grave consequence – reducing access to the one appellate court of Michigan that routinely considers most errors from the trial courts. Such a fee would make appeals from common matters litigated, such as divorces and child custody matters, beyond the reach of many of our average citizens. It would be hard to imagine that such an increase in fees would do other than further depress the number of appeals to our second highest court.

The concern for access to our Court of Appeals ought make the proposal to reduce the number of judges on that Court at least one worthy of serious consideration by the Legislature.

While the Supreme Court will take up the Court of Appeals fee increase proposal and judicial resources question in September, I think that we are all well served by making the SCAO data available to the Legislature during the summer when its budgetary discussions commence.

TAYLOR, C.J. and CORRIGAN, J., join the concurring statement of Justice YOUNG.

LONG RANGE PLANNING COMMITTEE
JUDICIAL RETREAT TOPICS
SEPTEMBER 28, 2005

INTRODUCTION:

The Long Range Planning Committee (LRPC) was asked, among other things,[1] to assume the Court will experience repeated budget cuts in each of the next five years and recommend the areas the Court should cut and the priority of such cuts. In addition, the LRPC was asked to consider whether there are other tactical and/or strategic changes in the operation of the Court that we ought to consider implementing. The LRPC was also asked to identify issues for discussion in a pro/con format that can be utilized by Dr. Dale Lefever to facilitate a discussion of these issues at the September 28, 2005 Judicial Retreat. The LRPC has identified the following Issues for discussion:

1. Are employee layoffs or other tools to implement salary reductions options of last resort?

YES

Employee layoffs and salary reduction actions adversely impact the morale of the Court's employees, and might undermine the productivity and quality of work. The Court should exhaust every other cost-cutting measure before resorting to measures that impact our loyal employees, many of whom have already sacrificed greatly under prior budget cuts.

NO

While certain cost-cutting measures can be implemented without greatly impacting the productivity or quality of the Court, at some point employee layoffs or implementation of other tools to contain salary costs (like a banked leave program or a furlough program) are preferred to cutting non-employee costs that are essential to the operation of the Court. For example, the Court needs to continue improving its technological capacity and, at some point, the need to expend funds on technology outweighs the cost of maintaining the current staff level, especially less productive employees. Thus, while layoffs and other salary reduction tools ought not be employed without due consideration, they are not options of last resort.

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[1] The LRPC was asked to assume both good and bad budget scenarios and recommend budget action accordingly. Due to the poor financial outlook of the Court's budget in the foreseeable future, the LRPC has identified only topics that are pertinent assuming repeated budget cuts for Fiscal Years 2006 through 2010.

2. Should the Court adopt a banked leave program?[2]

YES

If the Court must take action that impacts the salary of our employees, it should implement a banked leave program because the employees ultimately will be fully compensated for their time. Unlike furlough days, the Court will continue to operate at 100% capacity, although payroll costs are reduced by 5%. Moreover, when economic times are better, the state may, as it has done in the past, fund the banked leave liability that accrued from implementation of the banked leave program. Finally, although pay is reduced, the employees' base salary rates are unaffected and thus future COLA's and step increases will be calculated on the unaffected base pay.

NO

Banked leave is nothing more than a deferral of a liability that the Court will have to satisfy sometime in the future. The Court is in a financial crisis, and banked leave does nothing to alleviate it; it merely delays and magnifies the problem. A banked leave program adversely impacts employee morale, because employees are asked to work 100% of the time for 95% pay. Moreover, such a program cannot be implemented without permission of the Supreme Court, and the Supreme Court has declined to approve of banked leave programs in the past.

3. Should the Court adopt a furlough program?[3]

YES

A furlough program is preferred to banked leave time because our employees are not asked to work without timely compensation. Further, the Court does not incur a long-term liability under a furlough program. While employee morale may be impacted, we can schedule Court-wide furlough days around holidays, thereby allowing employees to spend extra holiday time with their families. Moreover, Court productivity is usually reduced around the holidays in any event. In addition, to lessen the financial hardship on our employees, we can schedule Court-wide furlough days in the months with three pay periods, usually June and December. So, for example, if we implement 6 furlough days—3 between Christmas and New Years, and 1 each with Memorial Day, July 4 and Labor Day—our employees will receive three paychecks in or near the months in which 5

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[2] "Banked Leave" has become very popular in other areas of State government. Essentially, the employee works a full week but is paid only 95% of his or her time. The remaining 5% is "Banked Leave," which can be used to take time off with pay at a later date or it can be paid into the employee's 401k deferred compensation plan at the time the employee severs employment with the Court. The employee is compensated for his or her banked leave time at his departing salary, regardless of whether the time was originally banked at a lower rate of pay.

[3] Under a furlough program the employee is told not to report to work on the furlough day and the employee's salary is reduced accordingly. A furlough program can be implemented through Court-wide closures or by allowing the employee to select the days he or she wants off without pay.

of the 6 furlough days are scheduled. Finally, although pay is reduced, the employees' base salary rates are unaffected and thus future COLA's and step increases will be calculated on the unaffected base pay.

NO

Furlough days are nothing more than a pay reduction for our employees. While the Court may close, the work must be done before and after the closure and our employees will not be compensated for this work. Moreover, our government salaries are not so lucrative that we can expect our employees to be able to absorb a pay cut. If we must reduce pay, it should be done through a banked leave program where our employees will eventually receive the compensation they are due. Finally, the holidays, particularly the year-end holidays, are the last days in which the Court should implement a Court-wide reduction in salary considering its negative impact on morale and the fact that many employees face higher bills as a result of holiday gift giving.

4. Should Judges voluntarily share judicial assistants to reduce the number of judicial assistants employed by the Court?

YES

The current system of assigning one judicial assistant to each Judge was implemented at a time (1965) when assistants typed opinions and other documents from dictation or long-hand using carbon copies. Given the technological advances of the past 40 years, there is no need to maintain judicial staffing at the same level. In the private sector, lawyers billing 2000 hours per year are sharing assistants with two other lawyers who are also billing 2000 hours per year. We need to make better use of our limited resources. By going to a two judge to one assistant ratio (through attrition), the Court would save $900,000 annually. Moreover, while there may be privacy issues that arise from a sharing of judicial assistants, there should be no confidentiality issues.

NO

Confidentiality issues preclude sharing judicial assistants. Moreover, in recent months, the Clerk's Office has assigned to the judicial assistants work traditionally performed by the Clerk's Office or Research Division, such as printing of research reports and opinions, motions affecting case call, and transcripts associated with the motion docket. With this recent reassignment of work into judicial chambers, now is not the time to place additional work on our judicial assistants.

5. Should proposed opinions be dropped from research reports?

YES

With the reduction of our Research Division due to budget cuts, we must devise ways to handle the same number of cases with less resources. Further, Judges will be better prepared and better understand the cases if they are forced, with their staff, to draft opinions in order to resolve cases. Historically, draft opinions did not always accompany

research reports. They were added at a point when the Research Division had the time and resources to include them. Given these tougher economic times, the Court no longer has the resources to include proposed opinions with research reports.

NO

The amount of time incurred by the research staff to create a proposed opinion, after drafting a research memorandum, is minimal. Court resources are more efficiently utilized by having the research staff draft proposed opinions simultaneously with the research report than having judicial chambers draft opinions after case call.

6. Should the Court reduce the number of Districts from 4 to 3 or from 4 to 2?

YES

Multiple districts are provided, in part, for the convenience of the litigants and bar. Given difficult financial times, multiple districts may be a luxury the Court can no longer afford.

NO

The cost savings that results from the elimination of one or two district offices is insignificant and is not justified, given the reduction in services that will result. Further, such a change cannot be undertaken without legislative approval. The number of Court-wide filings remains the same and the number of employees needed to process these files would be, for the most part, unchanged. Moreover, once the Legislature eliminates Court districts, it is unlikely they will ever be restored, even when economic times are better.

7. Should the Court ask the Legislature to reduce (through attrition) the number of Judges from 28 to 24?

YES

If costs continue to escalate without commensurate appropriations from the Legislature, the Court will be required to make deeper and deeper cuts in personnel-related expenditures and the Judges of the Court will not be able to effectively and efficiently manage the Court's docket. If we are required to cut our resources to the point that the Court's Research Division cannot produce enough cases on the monthly case call to keep 28 Judges working full time, we owe it to the tax payers to ask the Legislature to reduce through attrition the number of Judges on our Court and allow us to use the resources once dedicated for those four Judges to enhance the services provided by our Court. The Legislature increased from 24 to 28 the number of Judges on the Court of Appeals in 1992, at a time when it appeared the number of case filings would continue to increase. However, the number of case filings has not only failed to increase, but has decreased substantially since the Court expansion. While the Court has made great improvements in resolving cases more rapidly and with more detailed and, presumably, better reasoned opinions, Court efficiency cannot continue to improve if the Legislature refuses or is unable to adequately fund the Court.

NO

The Court is an equal branch of government that is entitled to adequate funding from the Legislature. The Court ought not relinquish its independence or authority due to the failure of the Legislature to adequately fund the Court. Instead, the 28 Judges of the Court should exercise their best efforts to provide adequate government services, notwithstanding inadequate funding.

8. Should the Judges of the Court of Appeals voluntarily relinquish their State-provided automobiles?

YES

Economic times are disastrous and the State cannot afford to provide its executives with automobiles. If the Court reimbursed every Judge for his or her business miles, the Court would still save approximately $200,000 per year. State funded automobiles are a luxury the State can no longer afford to provide.

NO

Unlike other state elected officials, the Judges of the Court of Appeals and Justices of the Supreme Court are not provided with an expense account to maintain a district office. The Justices of the Supreme Court and the Judges of the Court of Appeals were provided cars because they were not provided State office expense accounts. Moreover, these cars are part of the Judges' and Justices' compensation. The Judges have not had an increase in pay since 2002 and it does not appear that any increase in pay is possible before 2009. Elimination of our State-provided automobiles would amount to a pay reduction many Judges cannot afford to incur. Finally, once the cars are given up, they will likely never again be provided, even in the very best of economic times.